

AMENDED IN ASSEMBLY MAY 11, 2010
AMENDED IN ASSEMBLY MARCH 10, 2010
CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2041

Introduced by Assembly Members Villines and Smyth

February 17, 2010

An act to amend Sections 17072 and ~~17215~~ 19184 of, *to amend and repeal Sections 17131.4, 17131.5, 17215, 17215.1, and 17215.4 of*, and to add Sections 17138.5, 17138.6, 17215.2, *and* 17216 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2041, as amended, Villines. Income tax: health savings accounts.

The Personal Income Tax Law authorizes various deductions in computing income that is subject to tax under that law.

This bill would, for taxable years beginning on and after January 1, 2010, allow a deduction in connection with health savings accounts in conformity with federal law. In general, the deduction would be an amount equal to the aggregate amount paid in cash during the taxable year by, or on behalf of, an eligible individual, as defined, to a health savings account of that individual, as provided. This bill would, for taxable years beginning on and after January 1, 2010, also provide related conformity to that federal law with respect to treatment of the account as a tax-exempt trust and the allowance of rollovers from Archer Medical Savings Accounts, health flexible spending arrangements, or health reimbursement accounts to a health savings account.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17072 of the Revenue and Taxation Code
2 is amended to read:
3 17072. (a) Section 62 of the Internal Revenue Code, relating
4 to adjusted gross income defined, shall apply, except as otherwise
5 provided.
6 (b) Section 62(a)(2)(D) of the Internal Revenue Code, relating
7 to certain expenses of elementary and secondary school teachers,
8 shall not apply.
9 (c) The deduction allowed by Section 17216, relating to health
10 savings accounts, is allowed in computing adjusted gross income.
11 (d) The amendments made to this section by the act adding this
12 subdivision shall apply only to taxable years beginning on or after
13 January 1, 2010.
14 ~~SEC. 2. Section 17138.5 is added to the Revenue and Taxation~~
15 ~~Code, to read:~~
16 ~~17138.5. For taxable years beginning on or after January 1,~~
17 ~~2010, Section 106 of the Internal Revenue Code, as amended by~~
18 ~~Section 302 of the Tax Relief and Health Care Act of 2006 (Public~~
19 ~~Law 109-432), relating to health savings accounts, shall apply,~~
20 ~~except as otherwise provided.~~
21 ~~SEC. 3. Section 17138.6 is added to the Revenue and Taxation~~
22 ~~Code, to read:~~
23 ~~17138.6. For taxable years beginning on or after January 1,~~
24 ~~2010, Section 125 of the Internal Revenue Code, as amended by~~
25 ~~Section 1201 of the Medicare Prescription Drug, Improvement,~~
26 ~~and Modernization Act of 2003 (Public Law 108-173), relating to~~
27 ~~health savings accounts, shall apply, except as otherwise provided.~~
28 ~~SEC. 4. Section 17215 of the Revenue and Taxation Code is~~
29 ~~amended to read:~~
30 ~~17215. (a) Section 220(a) of the Internal Revenue Code,~~
31 ~~relating to deduction allowed, is modified to provide that the~~
32 ~~amount allowed as a deduction shall be an amount equal to the~~
33 ~~amount allowed to that individual as a deduction under Section~~
34 ~~220 of the Internal Revenue Code, relating to medical savings~~

1 accounts, on the federal income tax return filed for the same taxable
2 year by that individual.

3 ~~(b) Section 220(f)(4) of the Internal Revenue Code, relating to~~
4 ~~additional tax on distributions not used for qualified medical~~
5 ~~expenses, is modified by substituting “10 percent” in lieu of “15~~
6 ~~percent.”~~

7 ~~(c) Section 220(f)(5) of the Internal Revenue Code, as amended~~
8 ~~by Section 1201(c) of the Medicare Prescription Drug,~~
9 ~~Improvement, and Modernization Act of 2003 (Public Law~~
10 ~~108-173), relating to permitted rollovers from Archer Medical~~
11 ~~Savings Accounts, shall apply, except as otherwise provided.~~

12 ~~(d) The amendments made to this section by the act adding this~~
13 ~~subdivision shall apply to taxable years beginning on or after~~
14 ~~January 1, 2010.~~

15 ~~SEC. 5. Section 17216 is added to the Revenue and Taxation~~
16 ~~Code, to read:~~

17 ~~17216. For taxable years beginning on or after January 1, 2010,~~
18 ~~both of the following apply:~~

19 ~~(a) Section 223 of the Internal Revenue Code, as added by~~
20 ~~Section 1201 of the Medicare Prescription Drug, Improvement,~~
21 ~~and Modernization Act of 2003 (Public Law 108-173), and as~~
22 ~~amended by Title III of the Tax Relief and Health Care Act of~~
23 ~~2006 (Public Law 109-432), relating to health savings accounts,~~
24 ~~shall apply, except as otherwise provided.~~

25 ~~(b) Section 223(e)(1) of the Internal Revenue Code, as added~~
26 ~~by Section 1201 of the Medicare Prescription Drug, Improvement,~~
27 ~~and Modernization Act of 2003 (Public Law 108-173), shall be~~
28 ~~modified by substituting the phrase “Section 17651” for the phrase~~
29 ~~“Section 511 (relating to imposition of tax of unrelated business~~
30 ~~income of charitable, etc., organizations),” contained therein.~~

31 ~~SEC. 2. Section 17131.4 of the Revenue and Taxation Code is~~
32 ~~amended to read:~~

33 ~~17131.4. (a) Section 106(d) of the Internal Revenue Code,~~
34 ~~relating to contributions to health savings accounts, shall not apply.~~

35 ~~(b) This section shall apply to taxable years beginning on or~~
36 ~~after January 1, 2005, and before January 1, 2010.~~

37 ~~(c) This section shall remain in effect only until January 1, 2015,~~
38 ~~and as of that date is repealed.~~

39 ~~SEC. 3. Section 17131.5 of the Revenue and Taxation Code is~~
40 ~~amended to read:~~

1 17131.5. (a) Section 125(d)(2)(D) of the Internal Revenue
2 Code, relating to the exception for health savings accounts, shall
3 not apply.

4 (b) *This section shall apply to taxable years beginning on or*
5 *after January 1, 2005, and before January 1, 2010.*

6 (c) *This section shall remain in effect only until January 1, 2015,*
7 *and as of that date is repealed.*

8 SEC. 4. Section 17138.5 is added to the Revenue and Taxation
9 Code, to read:

10 17138.5. (a) *For taxable years beginning on or after January*
11 *1, 2010, Section 106 of the Internal Revenue Code, as amended*
12 *by Section 302 of the Tax Relief and Health Care Act of 2006*
13 *(Public Law 109-432), relating to health savings accounts, shall*
14 *apply, except as otherwise provided.*

15 (b) *For taxable years beginning on or after January 1, 2011,*
16 *Section 106 of the Internal Revenue Code, as amended by Section*
17 *9003 of the Patient Protection and Affordable Care Act (Public*
18 *Law 111-148), relating to health savings accounts, shall apply,*
19 *except as otherwise provided.*

20 (c) *The Franchise Tax Board shall prescribe those regulations*
21 *as may be necessary to carry out the purposes of this section.*

22 SEC. 5. Section 17138.6 is added to the Revenue and Taxation
23 Code, to read:

24 17138.6. (a) *For taxable years beginning on or after January*
25 *1, 2010, Section 125 of the Internal Revenue Code, as amended*
26 *by Section 11 of the Tax Technical Corrections Act of 2007 (Public*
27 *Law 110-172), and as amended by Section 114 of the Heroes*
28 *Earnings Assistance and Relief Tax Act of 2008 (Public Law*
29 *110-245), relating to health savings accounts, shall apply, except*
30 *as otherwise provided.*

31 (b) *For taxable years beginning on or after January 1, 2011,*
32 *Section 125 of the Internal Revenue Code, as amended by Sections*
33 *1515, 9005, and 10902 of the Patient Protection and Affordable*
34 *Care Act (Public Law 111-148), and as amended by Section 1403*
35 *of the Health Care and Education Reconciliation Act of 2010*
36 *(Public Law 111-152), relating to health savings accounts, shall*
37 *apply, except as otherwise provided.*

38 (c) *The Franchise Tax Board shall prescribe those regulations*
39 *as may be necessary to carry out the purposes of this section.*

1 *SEC. 6. Section 17215 of the Revenue and Taxation Code is*
2 *amended to read:*

3 17215. (a) Section 220(a) of the Internal Revenue Code,
4 relating to deduction allowed, is modified to provide that the
5 amount allowed as a deduction shall be an amount equal to the
6 amount allowed to that individual as a deduction under Section
7 220 of the Internal Revenue Code, relating to medical savings
8 accounts, on the federal income tax return filed for the same taxable
9 year by that individual.

10 (b) Section 220(f)(4) of the Internal Revenue Code, relating to
11 additional tax on distributions not used for qualified medical
12 expenses, is modified by substituting “10 percent” in lieu of “15
13 percent.”

14 (c) *This section shall apply to taxable years beginning on or*
15 *after January 1, 2005, and before January 1, 2010.*

16 (d) *This section shall remain in effect only until January 1, 2015,*
17 *and as of that date is repealed.*

18 *SEC. 7. Section 17215.1 of the Revenue and Taxation Code is*
19 *amended to read:*

20 17215.1. (a) Section 220(f)(5) of the Internal Revenue Code,
21 relating to rollover contributions, shall not apply.

22 (b) *This section shall apply to taxable years beginning on or*
23 *after January 1, 2005, and before January 1, 2010.*

24 (c) *This section shall remain in effect only until January 1, 2015,*
25 *and as of that date is repealed.*

26 *SEC. 8. Section 17215.2 is added to the Revenue and Taxation*
27 *Code, to read:*

28 17215.2. (a) *For taxable years beginning on or after January*
29 *1, 2010, Section 220 of the Internal Revenue Code, as amended*
30 *by Title III of the Tax Relief and Health Care Act of 2006 (Public*
31 *Law 109-432), relating to health savings accounts, shall apply,*
32 *except as otherwise provided.*

33 (b) *For taxable years beginning on or after January 1, 2011,*
34 *Section 220 of the Internal Revenue Code, as amended by Sections*
35 *9003 and 9004 of the Patient Protection and Affordable Care Act*
36 *(Public Law 111-148), relating to health savings accounts, shall*
37 *apply, except as otherwise provided.*

38 (c) *Section 220(a) of the Internal Revenue Code, relating to*
39 *deduction allowed, is modified to provide that the amount allowed*
40 *as a deduction shall be an amount equal to the amount allowed*

1 *to that individual as a deduction under Section 220 of the Internal*
2 *Revenue Code, relating to medical savings accounts, on the federal*
3 *income tax return filed for the same taxable year by that individual.*

4 *(d) The Franchise Tax Board shall prescribe those regulations*
5 *as may be necessary to carry out the purposes of this section.*

6 *SEC. 9. Section 17215.4 of the Revenue and Taxation Code is*
7 *amended to read:*

8 *17215.4. (a) Section 223 of the Internal Revenue Code, relating*
9 *to health savings accounts, shall not apply.*

10 *(b) This section shall apply to taxable years beginning on or*
11 *after January 1, 2005, and before January 1, 2010.*

12 *(c) This section shall remain in effect only until January 1, 2015,*
13 *and as of that date is repealed.*

14 *SEC. 10. Section 17216 is added to the Revenue and Taxation*
15 *Code, to read:*

16 *17216. (a) For taxable years beginning on or after January*
17 *1, 2010, Section 223 of the Internal Revenue Code, as amended*
18 *by Section 404(c) of the Gulf Opportunity Zone Act of 2005 (Public*
19 *Law 109-135), and as amended by Title III of the Tax Relief and*
20 *Health Care Act of 2006 (Public Law 109-432), relating to health*
21 *savings accounts, shall apply, except as following:*

22 *(1) Section 223(e)(1) of the Internal Revenue Code shall be*
23 *modified by substituting the phrase "Section 17651" for the phrase*
24 *"Section 511 (relating to imposition of tax of unrelated business*
25 *income of charitable, etc., organizations)," contained therein.*

26 *(2) Section 223(f)(4)(A) of the Internal Revenue Code shall be*
27 *modified by substituting "2½ percent" for "10 percent," contained*
28 *therein.*

29 *(b) (1) For taxable years beginning on or after January 1, 2011,*
30 *Section 223 of the Internal Revenue Code, as amended by Sections*
31 *9003 and 9004 of the Patient Protection and Affordable Care Act*
32 *(Public Law 111-148), relating to health savings accounts, shall*
33 *apply.*

34 *(2) For taxable years beginning on or after January 1, 2011,*
35 *the modification in paragraph (2) of subdivision (a) shall not apply.*

36 *(c) The Franchise Tax Board shall prescribe those regulations*
37 *as may be necessary to carry out the purposes of this section.*

38 *SEC. 11. Section 19184 of the Revenue and Taxation Code is*
39 *amended to read:*

1 19184. (a) A penalty of fifty dollars (\$50) shall be imposed
2 for each failure, unless it is shown that the failure is due to
3 reasonable cause, by any person required to file who fails to file
4 a report at the time and in the manner required by any of the
5 following provisions:

6 (1) Subdivision (c) of Section 17507, ~~relating to individual~~
7 ~~retirement accounts.~~

8 (2) Section 220(h) of the Internal Revenue Code, relating to
9 medical savings accounts for taxable years beginning on or after
10 January 1, 1997.

11 (3) *Section 223(h) of the Internal Revenue Code.*

12 ~~(3)~~

13 (4) Subdivision (b) of Section 17140.3 or subdivision (b) of
14 Section 23711 ~~relating to qualified tuition programs.~~

15 ~~(4)~~

16 (5) Subdivision (e) of Section 23712, ~~relating to Coverdell~~
17 ~~education savings accounts.~~

18 (b) (1) Any individual who:

19 (A) Is required to furnish information under Section 17508 as
20 to the amount designated nondeductible contributions made for
21 any taxable year, and

22 (B) Overstates the amount of those contributions made for that
23 taxable year, shall pay a penalty of one hundred dollars (\$100) for
24 each overstatement unless it is shown that the overstatement is due
25 to reasonable cause.

26 (2) Any individual who fails to file a form required to be filed
27 by the Franchise Tax Board under Section 17508 shall pay a
28 penalty of fifty dollars (\$50) for each failure unless it is shown
29 that the failure is due to reasonable cause.

30 (c) Article 3 (commencing with Section 19031) of this chapter
31 (relating to deficiency assessments) shall not apply in respect of
32 the assessment or collection of any penalty imposed under this
33 section.

34 (d) *The amendments made to this section by the act adding this*
35 *subdivision shall apply only to taxable years beginning on or after*
36 *January 1, 2010.*

1 ~~SEC. 6.~~

2 *SEC. 12.* This act provides for a tax levy within the meaning
3 of Article IV of the Constitution and shall go into immediate effect.

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